

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p>MON CHERI BRIDALS, LLC and MAGGIE SOTTERO DESIGNS, LLC,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>CLOUDFLARE, INC., a Delaware corporation; and DOES 1-10, Inclusive,</p> <p style="text-align: center;">Defendants.</p>	<p>Misc. Case No. 2:21-mc-00028</p> <p>Underlying Case: Case No. 3:19-cv-01356-VC United States District Court for the Northern District of California</p>
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**NON-PARTY XMLSHOP, LLC D/B/A COUNTERFEIT TECHNOLOGY’S
MEMORANDUM OF LAW IN SUPPORT OF MOTION TO EXTEND TIME TO
RESPOND TO THE MOTION TO COMPEL COMPLIANCE WITH SUBPOENA**

Non-Party XMLShop, LLC d/b/a Counterfeit Technology (“XMLShop”) submits this memorandum of law in support of its Motion to Extend Time to move, answer, or otherwise respond to the Motion to Compel Compliance by XMLShop, LLC d/b/a Counterfeit Technology with Subpoena (the “Motion”) filed by the Defendant Cloudflare, Inc. (“Defendant”), from Friday, March 26, 2021 to Wednesday, April 7, 2021.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On March 2, 2020, Defendant served a Subpoena to Produce Documents upon XMLShop (the 1st Subpoena”) in the matter of *Mon Cheri Bridals, LLC, et. al. v. Cloudflare, Inc., et. al.*, in the United States District Court for the Northern District of California, at Case No. 3:19-cv-01356-VC (the “Underlying Action”). *See* ECF No. 1-4, at ¶ 4, and Exhibit 3. On March 18, 2020, XMLShop, through counsel, served its Objections and Responses to the 1st Subpoena upon Defendant. *See id.*, and Exhibit 4.

On November 2, 2020, Defendant served a Second Subpoena to Produce Documents upon XMLShop (the 2nd Subpoena”) in the Underlying Action. *See* ECF No. 1-4, at ¶ 5, and Exhibit 5. On November 20, 2020, XMLShop, through counsel, served its Objections and Responses to the 2nd Subpoena upon Defendant. *See id.* at ¶ 7, and Exhibit 7.

As Defendant indicates in the Declaration of Sapna Mehta in Support of Motion of Defendant Cloudflare, Inc. to Compel Compliance by XMLShop, LLC d/b/a Counterfeit Technology with Subpoena (“Mehta Declaration”), Defendant has been aware of alleged deficiencies in the documents produced by XMLShop since at least December 3, 2020, when counsel for Defendant sent a letter to XMLShop’s counsel regarding the same. *See* Mehta Declaration, ECF No. 1-4, at ¶ 8. Counsel for XMLShop conferred regarding the 2nd Subpoena on December 15, 2020. *Id.* at ¶ 8. On January 4, 2021, XMLShop sent supplemental responses and comments through counsel in a letter directed to Defendant’s attorney. *Id.* at ¶ 9. Additionally, XMLShop’s attorney indicated that XMLShop provided certain responsive documents to Plaintiffs, Mon Cheri Bridals, LLC and Maggie Sottero Designs, LLC (collectively, the “Plaintiffs”), and those documents were already produced in the Underlying Action by the Plaintiffs. Defense counsel and XMLShop’s counsel were in contact between December 3, 2020 and February 11, 2021 regarding the 2nd Subpoena and depositions of XMLShop representatives. *Id.* at ¶¶ 10-13.

XMLShop’s corporate representative, Suren Ter-Saakov (“Ter-Saakov”), was deposed by remote videotaped deposition in the Underlying Action beginning on March 16, 2021 and ending on March 18, 2021. Ter-Saakov’s deposition took place only a few days after Defendant filed the Motion. During the period in which XMLShop would need to draft a response to the Motion with input from Ter-Saakov. During the course of the deposition Ter-Saakov indicated that XMLShop

reviewed the 1st Subpoena and the 2nd Subpoena (collectively, the “Subpoenas”), searched its files, and produced all responsive documents that were in its possession. *See e.g.* Transcript of Remote Videotaped 30(b)(6) Deposition of XMLShop, LLC d/b/a Counterfeit Technology, Suren Ter-Saakov, Tuesday, March 16, 2021, Volume I, and Wednesday, March 17, 2021, Volume II, collectively attached to the Declaration of Bianca A. Roberto, Esq. (“Roberto Declaration”), as Exhibit “1,” at Vol. I at pp. 10:10-25, 111-125, and Vol. II at pp. 148-152. Additional depositions were taken in the Underlying Action between March 22, 2021 and March 26, 2021.

Counsel for XMLShop contacted defense counsel on March 26, 2021 to request a brief extension of time to respond. *See* Roberto Declaration, at ¶ 5, and Exhibit “2.” However, defense counsel denied the request. *See Id.*

ARGUMENT

Pursuant to Federal Rule of Civil Procedure 6(b), a court may extend the time to respond upon good cause shown if the request is filed before the original time to respond expires. Fed. R. Civ. P. 6(b). Here, XMLShop was served with the 1st Subpoena on March 2, 2020, and responded on March 18, 2020. XML Shop was served with the 2nd Subpoena on November 2, 2020. XMLShop responded to the 2nd Subpoena on November 20, 2020. Thereafter, between December 3, 2020 and February 11, 2021, counsel for Defendant and XMLShop discussed XMLShop’s respective responses to the Subpoenas. Defendant was advised that all documents in XMLShop’s possession were served upon the Defendant through the Plaintiffs’ production, or by XMLShop in response to the Subpoenas. Accordingly, Defendant had ample time to file the underlying Motion. Instead, Defendant wanted until March 12, 2021, just thirty-five (35) days before the deadline for the completion of fact discovery and in the middle of a busy deposition schedule, to file the Motion.

All requirements for an extension of time are satisfied. First, this request is timely as the original period for a response to the Motion had not expired when XMLShop filed the instant motion. Second, XMLShop submits that good cause exists for the brief extension of time requested to afford XMLShop a reasonable opportunity to research the law, confer with representatives at XMLShop regarding the Motion, and prepare XMLShop's response to the Motion. XMLShop has repeatedly indicated that it complied with the Subpoenas, and all documents in its possession were provided to Defendant. XMLShop's representative and counsel have been in depositions in connection with the Underlying Action during the period of time for XMLShop to respond to the Motion. XMLShop would be prejudiced if not given adequate opportunity to respond to the Motion, which could result in the entry of an order compelling it to respond to Subpoenas to which it has previously provided responses. This Court should therefore extend the time period within which XMLShop, a non-party to the Underlying Action, may respond to the Motion.

CONCLUSION

For all the foregoing reasons, non-party XMLShop, LLC d/b/a Counterfeit Technology respectfully requests that this Honorable Court grant its Motion to Extend Time to respond to Defendant's Motion to Compel.

Respectfully Submitted,

STARK & STARK, P.C.

Dated: March 29, 2021

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum of Law in Support of Motion for Extension of Time to Respond to the Motion to Compel Compliance by XMLShop, LLC d/b/a Counterfeit Technology with Subpoena is being furnished this 29th day of March, 2021, upon the following via this Court's electronic filing system:

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Dated: March 29, 2021

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